

SEP 27 2018



September 20, 2018

Via US Mail, Certified

Paul C. Shattuck  
President  
Adhesive Products, Inc.  
520 Cleveland Avenue  
Albany, CA 94710  
paul@adhesiveproducts.com

Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Adhesive Products, Inc

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Adhesive Products ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 et seq., that EDEN believes are occurring at the Adhesive Products facility located at 520 Cleveland Avenue in Albany, California ("the Facility" or "the site")

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b) Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and

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- (c) The SWPPP fails to include an adequate description of Potential Pollutant Sources and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G.1).
- (d) The SWPPP fails to include a narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including the areas of the facility with likely sources of pollutants in storm water discharges and the pollutants likely to be present (Section X.G.2).
- (e) The SWPPP fails to include a DMP Summary Table summarizing each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants and the BMPs being implemented (Section X.H.4 and X.H.5).
- (f) The SWPPP fails to include an appropriate Monitoring Implementation Plan, including a discussion of Visual Observations, Sampling and Analysis and Sampling Analysis Reporting (Section XI).
- (g) The SWPPP fails to include an appropriate discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events (Section XII).
- (h) The SWPPP fails to include the appropriate sampling parameters for the Facility (Table 1, Section XI); and
- (i) The SWPPP fails to discuss the Annual Comprehensive Facility Compliance Evaluation (Section X.A.9).
- (j) The SWPPP fails to include the date of each SWPPP Amendment (Section X.A.10).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

**B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit

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Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

**I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around May 30, 1995, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the General Permit. On or around January 26, 2015, the Discharger submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2 01011634.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

**II. THE LOCATION OF THE ALLEGED VIOLATIONS**

**A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Adhesive Products' permanent facility address of 520 Cleveland Avenue in Albany, California.

Adhesive Products manufactures adhesives, graft glues and re-monetizable tapes. Facility operations are covered under Standard Industrial Classification Codes (SIC) 2891 Adhesives and Sealants

Based on the EPA's Industrial Storm Water Fact Sheet for Sector C – Chemical and Allied Products and the Facility's Storm Water Pollution Prevention Plan, polluted discharges from operations at the Facility potentially contain total suspended solids ("TSS"), polyvinyl acetate, ethylene vinyl acetate, plastic pellets, and oil and grease ("OMG"). Many of these

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that HMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

**2. Failure to Collect and Analyze the Required Number of Storm Water Samples**

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 11/2/15, 11/9/15, 11/15/15,

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pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

**B. The Affected Receiving Waters**

The Facility discharges directly into Cerrito Creek, which then flows to the San Francisco Bay ("Receiving Waters")

The San Francisco Bay is a water of the United States. The CWA requires that water bodies such as the San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the San Francisco Bay is listed for water quality impairment on the most recent 303(d)-list for the following: chloride, dichlorodiphenyltrichloroethane (DDT), dieldrin, dioxin compounds (including 2,3,7,8-tetrachlorodibenzo-p-dioxin), furan compounds, invasive species, mercury, polychlorinated biphenyls (PCBs), PCBs (dioxin-like), selenium, and trash.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife

**III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

**A. Deficient SWPPP**

The Discharger's current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows.

- (a) The SWPPP fails to include an adequate discussion of the Facility's receiving waters (Section XI.B.6(c), Section X.G.2.1x)
- (b) The SWPPP fails to include an appropriate discussion of the Industrial Materials handled at the facility (Section X.F.).

11/24/15, 12/3/15, 12/10/15, 12/13/15, 12/18/15, 12/20/15, 12/24/15, and 12/28/15.

- b. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 10/14/16, 10/27/16, 10/30/16, 11/19/16, 11/26/16, 12/8/16, 12/10/16, 12/15/16, and 12/23/16.
- c. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/2/17, 1/7/17, 1/10/17, 1/12/17, 1/18/17, 1/20/17, 2/2/17, 2/6/17, 2/16/17, 2/20/17, 3/4/17, 3/20/17, 3/24/17, 4/6/17, 4/12/17, 4/17/17 and 4/19/17.
- d. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. Qualified Storm Events occurred in the vicinity of the facility on the following relevant dates: 10/19/17, 11/4/17, 11/8/17, 11/16/16, and 11/26/17, and
- e. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/3/18, 1/5/18, 1/8/18, 1/22/18, 1/24/18, 2/28/18, 3/1/18, 3/12/18, 3/20/18, 3/24/18, 4/5/18, 4/11/18, and 4/16/18.

**3. Failure to Upload Storm Water Sample Analyses within 30 Days**

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

The Discharger failed to upload into SMARTS the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

Sample Date	Date of Laboratory Report	Date Uploaded into SMARTS	Length of Time Late
3/20/17 1/3/18	3/28/17 1/10/18	7/5/17 7/3/18	4 months 6 months

**4. Failure to Collect Samples From Each Drainage Area at all Discharge Locations**

Section XI.B.4 of the General Permit requires Dischargers to collect samples from all discharge locations, regardless of whether the discharges are substantially similar. Dischargers

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may analyze a combined sample consisting of equal volumes, collected from as many as four substantially similar discharge locations, provided that the Discharger submits a Representative Sampling Reduction Justification form with its sample analysis, and the samples are combined in the lab in accordance with Section XI.C.5 of the General Permit. Furthermore, Representative sampling is only allowed for sheet flow discharges or discharges from drainage areas with multiple discharge locations.

According to the Discharger's current SWPPP, the Facility has at least three mandatory sampling locations, listed as "northwest corner of the building," "creek-side pipes" and "down spouts near the shipping area." None of the Facility's storm water runoff sample analyses the Discharger uploaded for sample collected between 12-3-15 and 1-3-18 included storm water sample analyses from all three Outfalls.

Furthermore, the Facility did not submit a Representative Sampling Reduction Justification form with any of its sample analyses.

#### 5. Failure to Analyze Storm Water Samples for the Correct Parameters

General Permit sections XI.B.6 a and XI.B.6 b require all Dischargers to analyze for the following three parameters, regardless of facility type: pH, Total Suspended Solids (TSS) and Oil & Grease (O&G).

None of the Discharger's laboratory analytical reports from Curtis & Tompkins Laboratory Services for samples dated between 12-3-15 and 1-3-18 included oil & grease as an analytical parameter.

#### C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXII.L of the General Permit provides as follows:

##### L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification.

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry, the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The Discharger's exceedances of Benchmark values over the last three (3) years, identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies the Discharger that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility's self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Cal.* 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC*, (E.D.Cal. 2016) 205 F. Supp. 3d 1128, *Haykeeper v. Krumer Metals, Inc.* (C.D.Cal. 2009) 619 F. Supp. 2d 914, 925, *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT)].

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

#### 2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology-based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitation found in Section VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Dischargers that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly

Further, Section XXI.N of the General Permit provides as follows:

#### N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 5, 2017 and July 3, 2018, the Discharger submitted its Annual Reports for the Fiscal Years 2016-17 and 2017-2018, respectively. These Reports were signed under penalty of law by Paul Shattuck. Mr. Shattuck is the currently designated Legally Responsible Person ("LRP") for the Discharger.

Both the FY 2015-16 and 2016-17 Annual Reports included Attachment 1 as an explanation for why the Discharger failed to sample the required number of Qualifying Storm Events during the reporting years for all discharge locations, in accordance with Section XI.B. Mr. Shattuck certified in both of the reports, under penalty of perjury, that the required number of samples for each of the reporting periods were not collected by the Discharger because there were "no other QSEs for the reporting year."

Records from the National Oceanic and Atmospheric Administration (NOAA) website database confirm that during the fiscal years 2016-17 and 2017-18, there were sufficient Qualified Storm Events (QSEs) occurring near the Facility during or within 12 hours of the start of regular business hours to allow the Discharger to collect the requisite number of samples, as delineated above.

Based on the foregoing, it is clear that Mr. Shattuck made a false statement in both the Facility's 2016-17 and 2017-18 Annual Reports when he indicated that there were insufficient QSEs during the reporting years.

#### D. Deficient BMP Implementation

Sections I.C. V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water

comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999)).

The Basin Plan establishes WQS for the San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to EDEN indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts the Discharger on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDs are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP and certify via SMARTS any additional BMPs identified which are necessary in order to meet the Receiving Water Limitations.

discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

#### E. Discharges in Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

#### 1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology, economically achievable ("BAT") for toxic pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes "Numeric Action Levels" ("NALs") derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62))

EDEN alleges that from at least April 7, 2016, to the present, the Discharger has been in violation of the Receiving Water Limitations provision of Section VI of the General Permit as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan, indicated below.

Further, the Discharger has failed to comply with Section XX.H of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.H is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	Basin Plan/CCR T22 Benchmark NAL value
2016-2018 Reporting Year					
4/7/18	pH	SU	5.8	<6, >6	<6.5, >6.5
Level 1	pH				
2016-2017 Reporting Year					
3/20/17	pH	SU	5.7	<6, >6	<6.5, >6.5
Level 2	pH				

#### F. Failure to Comply with Level 1 and 2 Exceedance Response Action Requirements

As of July 1, 2015, the date the current General Permit became effective, all Dischargers were in "Baseline status" for all parameters listed in Table 2 of the Permit. (General Permit, Section XII(B).)

Pursuant to Section XII(C) of the General Permit, a Discharger's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate either an annual average or instantaneous NAL exceedance for that same parameter.

Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the Discharger enters the Exceedance Response Action ("ERA") process. The ERA process requires the discharger to conduct a Level 1 ERA Evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner ("QISWP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s), by October 1 following commencement of Level 1 status.

The Level 1 ERA Evaluation must include the identification of the corresponding BMPs in the SWPPP, as well as any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit.

Based upon the Level 1 ERA Evaluation, the Discharger is required to, as soon as practicable, but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. (Section XII(C)(2)). The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA Evaluation, a detailed description of the necessary SWPPP revisions, and any additional BMPs for each parameter that exceeded an NAL.

The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTs the Level 1 ERA Report certifying that the Level 1 ERA Evaluation has been conducted, and necessary SWPPP revisions and BMP implementation has been completed. The certification also requires the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status.

A Discharger's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter.

A Discharger will enter Level 2 status if there is an NAL exceedance of the same parameter occurring during the time the discharger is in Level 1 status.

#### Failure to Submit Level 1 ERA Report and Level 2 Action Plan

Based on the sample data summarized above, the Facility exceeded the EPA and Basin Plan Benchmark NAL for pH for the Fiscal Year 2015-16. These results elevated the Discharger to Level 1 Status for pH on July 1, 2016, pursuant to Section XII.C - Exceedance Response Actions of the General Permit.

Pursuant to Section XII(C)(2) of the General Permit, the Facility was required to have a QISP conduct an evaluation of the Facility by October 1, 2016, and to upload an adequate Level 1 ERA Report on or before January 1, 2017.

As of the date of this Notice, EDEN alleges that the Discharger has failed to conduct an adequate Level 1 status evaluation and has also failed to submit a Level 1 ERA report by uploading it into the SMARTs system.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

#### **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ  
Eden Environmental Citizen's Group

#### Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board

P.O. Box 100  
Roseville, CA 95812-0100  
  
Regional Administrator  
U.S. EPA - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Furthermore, on July 1, 2017, the Facility entered Level 2 status for an instantaneous pH exceedance on March 20, 2017. Pursuant to Section XII(D) of the General Permit, the Facility was required to upload an adequate Level 2 Action Plan on or before January 1, 2018.

Every day the Discharger conducts operations at the Facility without conducting an adequate Level 1 status evaluation, and/or without submitting an adequate Level 1 ERA Report is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The Discharger has been in daily and continuous violation of the General Permit's Level 1 status ERA evaluation requirement every day since October 1, 2016. The Discharger has been in daily and continuous violation of the General Permit for failing to submit an adequate Level 1 ERA Report every day since January 1, 2017. These violations are ongoing, and EDEN will include additional violations when information becomes available.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Adhesive Products, as well as employees of the Discharger responsible for compliance with the CWA.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
2151 Salvio Street #A2-319  
Concord, CA 94520  
Telephone: (925) 732-0960  
Email: [Edenenvcitizenna@gmail.com](mailto:Edenenvcitizenna@gmail.com) (emailed correspondence is preferred)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

EDEN has retained counsel in this matter as follows:

CRAIG A. BRANDT  
Attorney at Law  
5354 James Avenue  
Oakland, CA 94618  
Telephone: (510) 601-1309  
Email: [craigabrandt@aol.net](mailto:craigabrandt@aol.net)

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Craig A. Brandt.

#### **VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger and Property Owner to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5).